

NOTARY PUBLIC HANDBOOK

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This handbook was designed to provide information to current and prospective notaries public in the State of Montana on how to become a notary public, and to increase understanding of the powers and duties of that office. Please contact us at sosnotary@mt.gov with your suggestions and comments on how this handbook can be improved.

Any statements by the office of the Secretary of State regarding notaries or notarial acts are not intended as legal advice and should not be construed as such. If you have specific legal questions regarding your acts or conduct as a notary, the Secretary of State's office urges you to seek professional legal advice.

This handbook is also available online at sos.mt.gov/Notary/Handbook. Alternate accessible formats of this document will be provided upon request. For further information call (406) 444-5379 or for TDD (406) 444-9068).

Cover Photograph of 1898 Architectural Drawing of Montana Capitol courtesy of Montana Historical Society.

This illustration of the future Capitol was done by the architectural firm of Charles E. Bell & John H. Kent. The shape of the dome was changed during construction in 1901. Kent originally designed a low spherical dome, a design he considered to be "pure Greek." The capitol commission initially agreed to this design, but after construction was well under way they decided that they wanted a taller, more imposing structure, and they thought that raising the dome would be the most economical way to do this. Kent opposed the changes, but Bell sided with the commission, and today's capitol reflects who won.

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In the Beginning....

The history of the notary public began in early Roman society. In those days the notary served not only as the official witness but, in fact, was responsible for “scribing” or writing the documents. The concept spread through the European continent during the Dark and Middle Ages, where the notary was an agent of the Pope. Even though the Church lost much of its influence over governmental matters, there remained a need for someone who could be an official witness to legal acts and documents. Particularly, since very few people could read and write, there had to be someone who could identify the actual signer of a document. (It’s hard to determine one person’s X from another’s!) Although the rules have become more sophisticated, and vary somewhat from jurisdiction to jurisdiction, the basic concept of an unbiased representative of the government identifying the person who signed a particular document, or took a particular oath, remains at the very heart of the notary’s responsibilities.

OVERVIEW

A notary public is a public official commissioned by the Secretary of State to administer oaths and affirmations, witness signatures, and perform other duties as permitted by state law. A notary has a legal obligation to know Montana notary laws and to follow the standards of reasonable care for performing a notarial act. This handbook provides information to familiarize notaries with their responsibilities in Montana in performing notarial acts. As a public official, a notary is not acting on behalf of him/herself or their employer when performing a notarial act, but rather, on behalf of the state of Montana. It is the duty of all notaries to serve the public, and a notary may not unreasonably refuse to perform a notarial act for any member of the public who pays the statutory fee and meets all requirements prescribed by statute. It is equally important that notaries take precautions not to exceed the power of this office.

A NOTARY'S QUALIFICATIONS

An individual can apply to become a notary in Montana if they currently live in Montana, are at least 18 years of age, have been a Montana resident for at least one year, are not a convicted felon, and have not had a notary commission revoked or terminated in any state. The application process is outlined on page 14 of this handbook. The term of office of a notary public is four years. A notary has jurisdiction to perform their official duties in every county in Montana, not just the county in which they live. In some cases, a Montana notary public may perform a notarial act in an adjoining state, if the state recognizes his or her authority.

A NOTARY'S FUNCTION

A notary acts as an official, unbiased witness to the identity and signature of the person who comes before the notary for a specific purpose. The person may be taking an oath, giving oral or written testimony, or signing or acknowledging a signature on a legal document. In each instance the notary attests that certain formalities have been observed. Montana law defines certain "Notarial Powers" that a notary may perform. Notaries must constantly be aware that every notarial act affects the legal rights of others. Carelessness or negligence by the notary may injure these rights. Upon conviction of a violation of these rights, the notary may be punished as provided by law.

Integrity and skill are required of notaries in the discharge of their duties, for the mere mechanical performance of their office does not insure the added degree of authenticity that is the hallmark of the notarial act. Simply affixing your seal and signing your name does not constitute a proper notarization in the state of Montana. As you go through this handbook, pay very close attention to the exact requirements for various notarial acts. A notary will be held personally responsible for improper, negligent, or fraudulent actions.

A NOTARY'S GREATEST RESPONSIBILITY

If the notary's primary function is to be a witness to the identity of a person who is signing a document, taking an oath, or acknowledging a signature, it automatically follows that one of the notary's greatest responsibility is to be able to unequivocally testify that they did in fact witness the act they claimed to have notarized. In other words, the person whose signature, oath, or acknowledgment is being notarized **MUST** appear in front of the notary at the time the act takes place. There are no exceptions to this requirement. Failure to conclusively establish the identity of the person requesting a notarization places the notary at risk of being sued for negligence or malfeasance in office.

The person whose signature, oath, or acknowledgment is being notarized **MUST** appear in front of the notary at the time the act takes place.

Montana law views personal knowledge as the best form of identification, and thus requires no further proof of identity. However, if the notary does not know the person, it is most prudent for the notary to request **current, signed, and pictured** ID before performing a notarization. Acceptable forms of identification include a driver's license, a military or student ID, a passport, or a government issued ID. If there is any doubt as to the person's identity, the only safe practice is to refuse to notarize any signature, oath, or acknowledgment.

NOTARIAL SEAL AND STAMP

It is the responsibility of the notary to obtain and keep an official seal upon being commissioned. The State does not provide the seal. They may be purchased from most stationery, stamp, or office supply stores.

NOTARIAL SEAL

Montana statute requires the notary's seal to bear **only** the following information; *anything additional renders the image invalid as a Montana Notarial Seal*:

- The **Notary's Name** exactly as it appears on the Certificate of Commission
- The words, **State of Montana**
- The words, **Notarial Seal** or **Notary Public**

The law does not specify the size, shape, or type of seal that is required. A notary may use either a crimper-type or an ink-type seal; it is a matter of personal preference. In choosing between an embosser or ink-type seal, notaries should give consideration to the increased use of electronic transmission of documents. The ink-type offers a higher degree of legibility when documents are faxed or copied frequently.

EXAMPLES OF ACCEPTABLE SEALS:



Diana McLaughlin
Notarial Seal
State of Montana

OPTIONAL INFORMATION STAMP

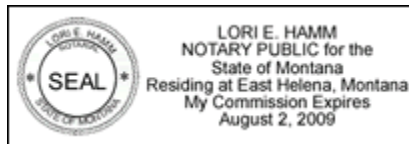
In addition to the official seal, notaries can choose to have a **stamp** made which contains most of the required information below the notary's signature in a notarial block. This information includes:

- The notary's **printed name**
- The title, **Notary Public for the State of Montana**
- The words, **Residing at** (the city/town where the notary lives)
- And, **My commission expires** (the month/day/four digit year)

EXAMPLE OF OPTIONAL INFORMATIONAL STAMP:

DELLA PEDERSEN
NOTARY PUBLIC for the State of Montana
Residing at Winston, Montana
My Commission Expires November 6, 2007

You may also choose to **combine the SEAL and STAMP in one unit** that would look like this:



These illustrations are meant only as examples. Montana statutes do not specify requirements other than those stated above. The Secretary of State's Office, Certification and Notary Services, can assist if you have questions on if a particular configuration fulfills the statutory requirements.

NOTARY TERMS

Acknowledgment. A notarial act which requires the person who has already signed a document to *personally appear* before the notary and swear (acknowledge) that he/she willingly signed the document for the purposes for which it was intended. The notary does not have to actually see the person sign the document, but does have to *actually witness* the person affirm the signature.

Affirmation. An oral promise, on one's personal honor, that the information given is true and accurate to the best of the signer's knowledge. Also known as an oath.

Affidavit. A written statement, signed before a notary, in which the person swears to the notary that the statement is true.

Apostille. A certificate of notarial authority issued by the Secretary of State. It certifies that the notarial block is completed according to Montana statutes and that the notary was commissioned and in good standing at the time the notarization was performed. This type of certification is required for documents to be used in foreign countries which are signatory to The Hague Convention of October 5, 1961.

Attorney-in-fact. A person (not necessarily a lawyer) who is given written authority to sign and/or act on behalf of another individual (the principal), normally through a document called a power of attorney.

Attest. To confirm (usually in writing) that a document is genuine.

Authentication. A certificate of notarial authority issued by the Secretary of State. It certifies that the notarial block is completed according to Montana statutes and that the notary was commissioned and in good standing at the time the notarization was performed. This type of certification is required for documents to be used in foreign countries which do not require an *Apostille*.

Certificate. 1. The official document issued by the Secretary of State granting a Notary Commission; 2. The notarial block, containing the requisite information that constitutes a notarization. (See "Notarial Block" below).

Certified Copy. An exact, complete and unaltered copy of a document, signed as a true copy of the original. Montana notaries *cannot certify copies* of public documents unless the original was issued by or is maintained in the office in which the notary works. See page 5 for further information.

Coercion. Forced or compelled into doing something, through fear, intimidation, and/or threats. A notary should refuse to notarize a signature or acknowledgment unless all parties are willingly involved.

Competence: The ability to understand. A notary should be comfortable that all parties understand what they are signing or affirming.

Credible Witness. Someone who is personally known to the notary who can swear to the identity of a person requesting a notarization who is not known to the notary and cannot produce proper identification.

Deposition. A written statement used in legal matters that is transcribed from oral testimony given under oath or affirmation and is usually signed by the person giving the oath or affirmation.

Forgery. False signature, written document or other creation made to imitate the true signature, document, or creation, with the intent to defraud.

Jurat. Notarial act that certifies having witnessed the signing of a document and administered an oath or affirmation, in which the signer declares the document to be truthful and accurate. See page 3 for further clarification.

L.S. Abbreviation of the Latin term *locus sigilli* meaning "place of seal". Traditionally used to indicate where the official seal is to be imprinted or stamped.

Medallion Signature Guarantee. A verification/guarantee of signatures on stocks and bond transactions that can *only* be done by a security broker or dealer participating in a medallion program. *A Medallion Signature Guarantee cannot be performed by a Montana notary public unless he/she has also been approved by the Securities Transfer Association, Inc.*

Notarial Acts. The official duties and responsibilities performed by a notary public whose function is to administer oaths; to take acknowledgments; to witness or attest signatures; to certify or attest copies; and to note a protest of a negotiable instrument, by affixing a complete notarial certificate including the notary's official signature and seal, in order to give them credit and authenticity.

Notarial Block/Certificate. The written acts of a notary. The statutory requirements for a proper notarial block in Montana are: 1. The venue (state and county *where the notarial act is being performed*.) 2. The date the notarization took place. 3. The declaration describing the type of notarial act performed. 4. The notary's original/official signature. 5. The notary's official name clearly typed, stamped or printed (under the signature and in addition to the notary's name in the seal). 6. The notary's title, "Notary Public for the State of Montana". 7. Residing at (the city or town *where the notary lives*). 8. Commission expiration date (Month / Day / Four-digit Year). 9. The notary's official seal.

Notary Public. A public ministerial officer, also an agent of the state, commissioned by the Secretary of State to serve the public as an impartial party to a document, to deter fraud, with duties specified by law.

Notarial Seal. The official seal of the notary. In Montana the seal may be either an embosser (crimper) or an ink-type. The seal must contain the following elements: 1. The notary's name exactly as it appears on his/her certificate of commission. 2. The words "Notarial Seal" or "Notary Public". 3. The words "State of Montana".

Negligence. Failure to use reasonable care that would be expected of any other person in a similar situation.

Oath. A statement of truth, either written or verbal, given under penalty of perjury.

Perjury. Making of false statement under oath. Generally punishable by fine and/or imprisonment.

Reasonable Care. The use of ordinary prudence and intelligence exercised in similar circumstances. Failure to use reasonable care is negligence.

SS or SCT. Abbreviation of the Latin word *scilicet*, meaning "in particular" or "namely." Traditionally included to the right of the venue in a notarial block.

Signature Guarantee. See *Medallion Signature Guarantee* above.

Subscribe. To sign.

Swear. To take an oath.

Venue: The location (state and county) where a notarization was performed. This is a requirement in a notarial block in the state of Montana.

FUNDAMENTAL NOTARIAL ACTS

The standard meaning of “notarizing a document” is really notarizing a signature. Notarizing a signature might loosely be defined as authenticating that signature. In Montana law there are three levels of authenticating a signature. These standard actions are described in the first three subparagraphs of [1-5-603, MCA](#):

1-5-603. Notarial acts.

- (1) In taking an **acknowledgment**, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.
- (2) In taking a **verification upon oath or affirmation**, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.
- (3) In **witnessing or attesting a signature**, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named in the instrument.

Acknowledgment

The least exacting process is the taking of an **acknowledgment**. Although this process requires the signer to appear before the notary, it does **not** require the notary to witness the act of signing. Often the party has mistakenly signed before realizing it should be done before a notary. In most cases, the requirement will be met if the signer acknowledges before the notary that he/she signed the document, and the notary then merely attests to the fact that the signer personally acknowledged the signature in the presence of the notary and that the notary has determined the identity of the signer as otherwise required. See short form #2 on page 27 for an example of the correct format for this type of notarial block.

Verification upon oath or affirmation

The most demanding process is taking a **verification upon oath or affirmation**. The notary not only witnesses the signature which must be made in his/her presence and must authenticate the identity of the signer, but he/she must also administer an oath and affix a **jurat** to reflect that the signer swore or affirmed the truth of the document signed. A **jurat** includes an oath by the signer that the statements made in the document are true. For some legal uses, the document would be inadmissible or useless if the jurat is not properly prepared. Montana motor vehicle titles and contractor license applications are two of the most commonly seen documents requiring jurat notarizations. See short form #6 on page 29 for an example of the correct format for this type of notarial block.

Witnessing or attesting a signature

Witnessing or attesting a signature is probably the most common of notarial acts requiring the notary to witness the signature by the signer who appears in person before the notary to do the signing. The notary also must authenticate the identity of the signer by approved methods. See short form #1 on page 27 for an example of the correct format for this type of notarial block.

HOW DOES A NOTARY KNOW WHAT TYPE OF NOTARIAL ACT TO PERFORM?

If the document contains a preprinted notarial block, the “description” tells you what to do. Use the “Quick Reference for Proper Notarizations”, pages 26- 28, of this handbook as a guide to determine which type of notarization you are being asked to perform.

If the document does not have a preprinted notarial block, you must ask the person requesting the notarization what type of notarization is needed. A notary cannot make that determination, as that would constitute the unauthorized practice of law. If the person doesn’t know, the notary should advise them to contact the source of the document to find out the desired notarial act and then use the appropriate format.

CERTIFYING COPIES

A Montana Notary Public may be asked to certify or attest that a copy of a document or other item is a full, true, and accurate transcription or reproduction of that which was copied. Two statutes in the Montana Code Annotated (MCA) directly address the issue of a notary's responsibilities when asked to certify a document or a copy of a document. They are reprinted below with emphasis added to the relevant sections:

[1-5-416. Powers and duties.](#)

(1) A notary public shall: ... (c) whenever requested and upon payment of the required fees, make and give a certified copy of any record kept or that originated in the notary public's place of employment. ...

(2) A notary public may not: ... (c) certify a document issued by a public entity, such as a birth, death, or marriage certificate, unless the notary is employed by the entity issuing or holding the original version of that document.

[1-5-603. Notarial acts.](#)

...(4) In certifying or attesting a copy of a document or other item, the notarial officer shall determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

Although it may appear that there is a contradiction in the law between [1-5-416\(2\)\(c\), MCA](#) and [1-5-603\(4\), MCA](#), the following clarification may be helpful:

A Montana Notary Public **may not** certify a document issued by a public entity, such as a birth, death, or marriage certificate, unless the notary is employed by the entity issuing or holding the original version of that document, [1-5-416\(2\)\(c\), MCA](#).

A Montana Notary Public **may** certify or attest that a copy of a document or other item is a full, true, and accurate transcription or reproduction of that which was copied, upon making such a determination, [1-5-603\(4\), MCA](#). The language approved as a "short form" in [1-5-610\(5\), MCA](#), is: "I certify that this is a true and correct copy of a document in the possession of _____."

This is clearly different from certifying a document issued by a public entity. For example, if an individual brought a certified copy of an out of state birth certificate, a Montana Notary could make a copy and attest that the copy is a true and correct copy of a document in the possession of the individual. This would not be a certified copy, and is quite a large step removed from the certification made by the officer in whose custody the document is held.

The Montana Notary could also notarize a jurat by the individual swearing that the copy on which the jurat and signature are affixed is a true and correct copy of another document. The Notary would then only be charged with determining the true identity of the signer, not the accuracy of the copy. Again, this would not be a certified copy.

The definition of a certified copy in **Black's Law Dictionary** (seventh Edition, 1999) is "A duplicate of an original (usually official) document, certified as an exact reproduction usually by the officer responsible for issuing or keeping the original." Certified copy is what is intended by [1-5-416\(2\)\(c\), MCA](#), above, not [1-5-603\(4\), MCA](#). A Montana notary would be wise to determine if an individual needs a certified copy, in which case the attestation to a true and correct copy should not be done.

STATE CERTIFICATION OF DOCUMENTS TO BE SENT TO A FOREIGN COUNTRY

APOSTILLE – AUTHENTICATION

The Montana Secretary of State's office can provide state certification for documents that are to be sent to, or used in, a foreign country. Both types of certification – *apostille* and *authentication* – verify that the Notary Public, Clerk of Court, Clerk & Recorder, or Vital Records Administrator is authorized to provide the notarization or certification and that he/she has done so in accordance with the Montana Code Annotated. Additional certification of a notary public by an official at the local or county level is not provided in Montana.

If you are asked to notarize something that will be submitted for either type of certification, there is nothing special that you are being asked to do – except do the notarial block 100% correctly! As long as you follow the appropriate instructions as provided in this handbook and complete a full notarial block, the requested state certification can be provided.

Based on the experience of the Secretary of State's office, there are some common errors that cause the documents to be returned. Be aware of the following:

- If you are asked to certify a document, refer to the information on page 5 of this handbook before complying with the request. Be sure you are authorized to certify the document and then be sure to do so according to statutory regulation.
- In most cases you will be notarizing someone's signature; all the notary rules apply:
 - Make sure there is a signature to notarize.
 - Make sure you witnessed the signing or the acknowledgment of the signature. The person who signed the document must have appeared in front of you.
 - Complete a full notarial block – even if the preprinted form does not require certain information.
 - If there is no preprinted notarial block, ask the customer what kind of notarization is required (*see page 3 of this handbook*). If the customer does not know, advise them to find out from the entity requesting the document or the author of the document.

SPECIAL NOTE: Notarizing and/or Certifying Official School Records for Foreign Use

State certified copies of school transcripts and diplomas are frequently requested for foreign exchange students. These require an additional step before the apostille or authentication can be issued.

1. An authorized school official (Principal, Registrar, etc.) must certify the document:

Sample wording for school official certifying an original school document:

On ____ (date) ____, I the undersigned, do hereby certify that this is a true and original ____ (specify the type of document) ____ issued by ____ (name of school) ____.

[Signature of school official]

[Printed name and Official Title]

Sample wording for school official certifying a copy of a school document:

On ____ (date) ____, I the undersigned, do hereby certify that this is a true and unaltered copy of the original ____ (specify the type of document) ____ issued by ____ (name of school) ____.

[Signature of school official]

[Printed name and Official Title]

2. A notary public must then notarize the school official's signature using an appropriate form as shown on pages 26 - 28 of this handbook.

QUICK REFERENCE FOR PROPER NOTARIZATIONS

FREQUENTLY USED NOTARIAL BLOCKS “SHORT FORMS”

Notaries can use the examples shown below as guidelines for proper and acceptable notarial blocks under Montana statutes. **All nine elements, as described on the back cover of this handbook, must be included in every notarization. If a preprinted form on the document does not request all the information, the notary will need to add the missing elements.** These are guidelines and specific circumstances may require slightly different wording in the description to accurately describe the exact nature of the notarial act being performed. The words in parentheses () are for instructional purposes; they should **not** appear on an actual document.

1. When notarizing a signature on a document [Most frequently requested notarial act]:

State of Montana

County of (Where you are performing the notarization)

Signed and acknowledged before me on (date) by (name of person signing document).

(SEAL)

(Signature of Notary)

(Name - typed, stamped, or printed)

Notary Public for the State of Montana
(Title)

Residing at (city where notary lives)

My Commission Expires (Month / Day / Four digit Year)

2. When taking an acknowledgment of a signature [The person has already signed the document but appears in front of the notary and swears that he/she was the person who signed the document]:

State of Montana

County of (Where you are performing the notarization)

This instrument was acknowledged before me on (date) by (name of person signing document).

(SEAL)

(Signature of Notary)

(Name - typed, stamped, or printed)

Notary Public for the State of Montana
(Title)

Residing at (city where notary lives)

My Commission Expires (Month / Day / Four digit Year)

3. For attestation of a copy of a private document [When a person requests the notary to make a copy of a document they have in their personal possession and notarize it.]:

State of Montana

County of (Where you are performing the notarization)

I certify that this is a true and correct photocopy of (describe document) in the possession of (name of person), on (date).

(SEAL)

(Signature of Notary)

(Name - typed, stamped, or printed)

Notary Public for the State of Montana
(Title)

Residing at (city where notary lives)

My Commission Expires (Month / Day / Four digit Year)

4. For attestation of a copy of a document [Such as a passport, non-certified copy of a transcript or diploma, etc.]:

(Have the person write this next sentence on the copy of the document and then sign)

This is a true and exact copy of (describe document) in my possession on (date).

(Signed by the person)

State of Montana

County of (Where you are performing the notarization)

Signed and sworn to (or affirmed) before me on (date) by (name of person signing document).

(SEAL)

(Signature of Notary)

(Name - typed, stamped, or printed)

Notary Public for the State of Montana
(Title)

Residing at (city where notary lives)

My Commission Expires (Month / Day / Four digit Year)

CAUTION - Montana notaries cannot **certify** copies of documents issued by public entities unless they work in the office where the original document was produced or maintained. See page 5 of this handbook and be sure you understand the difference.

5. For notarizing in a representative capacity [When the person has a Power of Attorney or is a Trustee or Officer of a corporation, etc., and is either signing before you or swearing he already signed the document]:

State of Montana

County of (Where you are performing the notarization)

This instrument was (signed and sworn to) (acknowledged) before me on (date) by (name of person coming before you) as (type of authority – officer, trustee, attorney-in-fact, etc.) of (name of party or entity on behalf of whom the document was executed).

(SEAL)

(Signature of Notary)

(Name - typed, stamped, or printed)

Notary Public for the State of Montana
(Title)

Residing at (city where notary lives)

My Commission Expires (Month / Day / Four digit Year)

6. For verification of an oath or affirmation [This is a *Jurat* notarization. When the person is taking an oath or swearing to the truth and accuracy of the information as well as signing the document. See page 3 for more information].

State of Montana

County of (Where you are performing the notarization)

Signed and sworn to (or affirmed) before me on (date) by (name of person making statement).

(SEAL)

(Signature of Notary)

(Name - typed, stamped, or printed)

Notary Public for the State of Montana
(Title)

Residing at (city where notary lives)

My Commission Expires (Month / Day / Four digit Year)

FREQUENTLY ASKED QUESTIONS

Q Can I notarize my spouse's or other family member's signature?

A Yes – as long as you are not named in, or a direct beneficiary of, the transaction referenced in the document being signed. [[1-5-416\(2\)\(b\), MCA](#)]

Q I just got married/divorced – how do I change my name on my commission?

A Start by contacting your insurance agent and requesting a "name change rider". Once the rider is sent to you, you need to sign it using your new signature and send the rider, along with a completed Contact Information Update form, to: Montana Secretary of State, PO Box 202801, Helena MT 59620. A certificate reflecting the name change will be sent to you and you can then replace your official Notarial Seal. [[1-5-409\(2\), MCA](#)]

Q Do I have to notify the state if I move or change jobs?

A Yes. Please send your updated information to: Montana Secretary of State, PO Box 202801, Helena MT 59620, so that the records reflect your current residence and business information, including addresses and phone numbers. [[1-5-409\(1\), MCA](#)]

Q If I am notarizing a signature on a document that has a preprinted notarial block do I use that or do I have to use a format as shown on pages 26 - 28?

A A correct notarial block in Montana must contain all 9 elements as listed on the back cover of this handbook. If the pre-printed form does not have one or more of the required elements, you should add it/them to the document, even if the placement may be slightly different from the suggested form. [[1-5-609\(1\), MCA](#)]

Q How do I renew my commission?

A The current instructions for applying for or renewing a commission can be found on page 14 of this handbook; however, there may be changes in the process from time to time. You are encouraged to visit the website <http://sos.mt.gov/> to check out the most current requirements.

Q My employer paid for my bond and filing fee when I became a notary, but I don't work there anymore. Do I have to get a new bond?

A A notary commission is issued to the individual, not to the employer, so your commission is not dependent upon your continued employment at the same place. Generally, a bond cannot be cancelled by the employer, but you should verify the status with the surety company which issued it. If the Secretary of State's office is notified that a bond has been cancelled, every effort will be made to notify the notary immediately.

Q I recently notarized a signature on a document and the County Clerk & Recorder's Office sent it back because I put my expiration date as "12/05" – why?

A Montana statute specifically requires the notary to enter his/her commission expiration date showing **the month, the day, and four digit year.** If not shown that way, the notarial block is not correct, and the Clerk & Recorder may refuse to accept the document as a "recordable instrument." [[1-5-416\(1\)\(e\), MCA](#)]

Q I am moving out of state – or wish to resign my commission – what do I do with my seal?

A When terminating a commission for any reason, a notary must deposit all his/her notarial records with the County Clerk & Recorder in the county in which he/she resides. [[1-5-419, MCA](#)] It is recommended that you destroy your seal.

Q What can a notary public do?

A A Montana notary public is empowered to: take acknowledgements and give a certificate of the same; take depositions and affidavits, if the notary is knowledgeable of the applicable legal requirements, and administer oaths and affirmations as allowed by statute; make and give certified copies of any record that was issued by or filed in the

notary's place of employment; provide and keep and official seal; and authenticate all official acts with the official seal.
[\[1-5-416, MCA\]](#)

Q Should I keep a journal?

A *Montana law does not require that Montana notaries keep a journal of their notarial acts. The Secretary of State's Office does recommend you give consideration to the benefits of doing so. A journal is a record of the notarial acts performed and can be vital in protecting the notary from possible liability. The journal should be a bound book where the following information is recorded for each transaction: date and time of the notarial act; nature or type of notarial act; description of the document; signature, printed name and address of each person for whom a notarial act is performed; method by which the person's identity was determined; fee charged, if any; and place where the notarial act was performed.*

Q Can I notarize something when I am in another county in Montana or in another state?

A *A person receiving a commission as a Montana notary has jurisdiction to perform notarial acts and official duties in every county in Montana, regardless of the notary's place of residence. [\[1-5-415, MCA\]](#) Montana is one of the few states that does have a policy of reciprocity with neighboring states that also recognize that authority. At this time only Wyoming and North Dakota allow a Montana notary to perform a notarial act while in those states. [\[1-5-605, MCA\]](#)*

Q Can I notarize something when I didn't actually see the person sign the document?

A. *You can take the person's acknowledgment that he was the one who signed the document (See Short Form #2 on page 27 of this handbook); however, the person **must** appear before you to swear that he is the signer and you must still verify his identity. This cannot be done by phone, fax, or comparison of signatures – ever.*

Q What liabilities does a notary assume?

A *A Montana notary public assumes all liability for any and all damages caused by the notary's official misconduct or negligence. [\[1-5-406, MCA\]](#) It is important to understand that the surety bond which notaries are required to obtain and submit to the State does not protect the notary in the event that a claim is made against them. You should consider purchasing "Errors and Omissions Insurance" to provide this protection.*

Q What kind of documents may I notarize?

A *Technically, you do not notarize a document. You notarize signatures, acknowledgments, oaths, affirmations, attestations, or verifications. This is a very important distinction that you as a notary should understand completely before performing any notarial acts.*

Q What is a "Signing Agent"?

A *A "Signing Agent" is a notary public who specializes in the process of obtaining and notarizing the signatures of the party(ies) involved on real estate loan documents for the purpose of closing a real estate loan transaction. Montana statutes do not specifically reference this term.*

Q I use an embosser-type seal which makes the impression 7/8ths of an inch from the edge of the paper. Since Montana statutes require the margins for publicly recorded standard documents to be 1 inch or more, how do I comply with these standards?

A *The elements of a notarial block have been exempted from Standards for Recordable Document.*

NOTARY PUBLIC SELF-QUIZ

Although this notary public self-quiz is not mandatory, we recommend that you read the handbook and take it. If you have any questions or concerns after taking this quiz and reviewing the handbook, please contact the Notary Section of the Secretary of State's office.

- T___ F___ 1. A Montana notary's commission is for four years.
- T___ F___ 2. A notary public commissioned by the State of Montana may perform notarial acts anywhere in the state of Montana.
- T___ F___ 3. A notary public commissioned by the State of Montana may perform notarial acts in Wyoming and North Dakota as well as throughout Montana.
- T___ F___ 4. A notary public may use an ink stamp as a substitute for his/her signature.
- T___ F___ 5. A notary may not act as such in a transaction in which the notary is named or has a direct interest.
- T___ F___ 6. A notary public need not require an individual to personally appear before them when they are executing an acknowledgment, and the person's handwriting is well known to the notary.
- T___ F___ 7. The date set forth on the acknowledgment may be different from the date set forth on the document to which it refers.
- T___ F___ 8. The size of the notary's seal is established by law.
- T___ F___ 9. If a notary changes employment before his/her commission expires, the commission is automatically terminated.
- T___ F___ 10. If a notary moves out of the state before his/her commission expires, the commission is automatically terminated.
- T___ F___ 11. There are nine elements required by Montana statute for a proper notarization.
- T___ F___ 12. The Secretary of State's office will provide each notary with a current Certificate of Commission, showing the notary's official name and term of commission.
- T___ F___ 13. A notary may perform his/her duties only in the county in which he/she either works or lives.
- T___ F___ 14. The surety bond, which Montana notaries are required to post with the state, will protect the notary from any monetary damages caused by his/her improper notarial acts.
- T___ F___ 15. A notary may copy a document and certify it as a true and correct copy.
- T___ F___ 16. If a notary has a change of name, he/she must notify the Secretary of State's office before obtaining and using a new seal and/or stamp.
- T___ F___ 17. A jurat notarization is used when the signer not only acknowledges the signature, but also swears that the information contained in the document is truthful.

- T___ F___ 18. The \$25 fee that is sent to the Secretary of State's office pays for the notary's seal which will be sent within two weeks of the Certificate of Commission.
- T___ F___ 19. At the beginning of the notary statement where it has "State of Montana, County of _____", the notary should put the name of the county where he/she works.
- T___ F___ 20. If a document from another state has a pre-printed notarial block that does not require one or more of the nine elements of a correct notarial block in Montana, a Montana notary should only fill in the elements required by the state issuing the document.
- T___ F___ 21. If a person who is unknown to you requests that you notarize his signature, you can do it only if he provides his birth certificate and a credit card with his signature on the back.
- T___ F___ 22. In Montana a notary may act as a signing agent for out-of-state companies only.
- T___ F___ 23. You may notarize the signature of a person you know very well even if you didn't see that person actually sign the document, as long as they fax you written permission to do so.
- T___ F___ 24. A notary cannot notarize a document that has only been signed by one of the two individuals who are required to sign the document.
- T___ F___ 25. If you are asked to notarize a signature and there is not enough room by the signature, the next best place to put the notarial block is on the back of that piece of paper.
- T___ F___ 26. A Montana notary is required to have an embosser (crimper) seal.
- T___ F___ 27. When completing a notarial block, you should write your commission expiration date as month/day /four digit year.
- T___ F___ 28. A Montana notary may notarize his/her spouse's signature.
- T___ F___ 29. If you have obtained your bond from the insurance company, but have not yet received your Certificate of Commission with your new commission dates, it is OK to perform notary functions.
- T___ F___ 30. The statutes regarding notaries in Montana are found in Title 1, Chapter 5 of the Montana Code Annotated.

Answers can be found on the next two pages, and throughout this handbook.

ANSWERS TO THE NOTARY PUBLIC SELF-QUIZ

1. **True.** See [1-5-403, MCA](#).
2. **True.** See [1-5-415, MCA](#).
3. **True.** See [1-5-605, MCA](#).
4. **False.** See [1-5-416\(1\)\(e\), MCA](#).
5. **True.** See [1-5-416\(2\)\(b\), MCA](#).
6. **False.** See [1-5-603\(1 – 3\), MCA](#). The requirement is that “*person appearing* before the officer...”.
7. **True.** See [1-5-603\(1 – 3\), MCA](#). By definition, an acknowledgment is done after the document was signed, and the person appearing before the notary is swearing that he/she is the person who signed the document previously. However the date of an acknowledgement must be the *same or after* the date the document was signed.
8. **False.** [1-5-416\(1\)\(d\), MCA](#) makes no mention of the size or shape of an official Notarial Seal. See page 2 of this handbook for further clarification regarding the requirements for the official Notarial Seal.
9. **False.** Under [1-5-404, MCA](#) only the Secretary of State may revoke a notary’s commission and then only upon 10 days notice for just cause. An employer is not given that authority. As long as the notary continues to meet the criteria established by [1-5-402, MCA](#), the commission would continue. However, under [1-5-409\(1\), MCA](#) the notary must inform the Secretary of State’s Office of the change of employment, as well as any other business or personal contact information.
10. **True.** See [1-5-402, MCA](#), “...must continue to reside within the state of Montana. Removal from the state...vacates the office and is equivalent to resignation.”
11. **True.** See [1-5-416\(1\)\(e – f\), MCA](#) and [1-5-609, MCA](#) and the back cover of this handbook. *All nine elements must be present on each and every notarization.*
12. **True.**
13. **False.** See [1-5-415, MCA](#).
14. **False.** See [1-5-406, MCA](#).
15. **True - unless it is a document issued by a public entity.** See [1-5-603\(4\), MCA](#) and [1-5-416\(2\)\(c\), MCA](#) and the clarification on page 4 of this handbook.
16. **True.** See [1-5-409\(2\), MCA](#).
17. **True.** See Notary Terms, page 24, and further clarification on page 3 of this handbook.
18. **False.** The Secretary of State’s Office does *not* provide the notarial seals or stamps. The notary must obtain them him/herself.
19. **False.** See [1-5-609\(1\), MCA](#). Also see Notary Terms “Venue”, page 25 of this handbook, and the Checklist for Proper Notarizations on the back cover – Step 1.
20. **False.** See [1-5-609\(1\), MCA](#).
21. **False.** When determining the identity of an unknown individual, a notary should request *current, signed, and pictured* ID. These include a driver’s license, a military or student ID, a passport or other government-issued ID. Birth certificates,

social security cards, green cards, and other documents which do not have a current picture and signature of the bearer, are of no use in identifying an individual. Credit cards and other privately issued documents may not have required an adequate level of identification for issuance and should not be relied upon.

22. **False.** Montana statutes do not currently regulate signing agents per se. A Montana notary is acting on behalf of the State of Montana regardless of the type of notarial act being performed.

23. **FALSE!** See [1-5-603\(3\), MCA](#), “the notarial officer shall determine...that the signature is that of **the person appearing before the officer...**” [Emphasis added].

24. **False.** *A notary does not notarize a document.* See [1-5-416\(1\)\(a – e\), MCA](#) and [1-5-603\(1 – 5\), MCA](#). It is perfectly acceptable to notarize only one (or less than all) of the signatures on a document. In the description of the type of notarial act (Step 3 of the 9 elements of a proper notarization) the notary should very clearly state exactly who appeared before him/her and whose signatures were notarized.

25. **True.** If there is absolutely no room for the notarial block near the signature, the next best place is on the reverse of the document. If that is not possible, a notarial block may be placed on a separate sheet of paper, but it is very important that the notary very clearly identify the type of document, the date of the document and any other pertinent data, as well as the name of the person whose signature is being notarized, so that there is no possibility of the notarization being applied to a different document. That paper should then be attached to the document.

26. **False.** See [1-5-416\(1\)\(d\), MCA](#). Either a crimper or an ink stamp is acceptable. See page 2 of this handbook for additional information.

27. **True.** See [1-5-416\(1\)\(e\), MCA](#).

28. **True – with conditions.** See [1-5-416 \(2\)\(b\), MCA](#). If a notary is named in the document or has an interest from which the notary will directly benefit as a result of the transaction, he/she may not notarize the signature – regardless of whose signature it is.

29. **False.** The Certificate of Commission is the official proof that notary has been commissioned by the Secretary of State, and provides notice of the official name of the notary and the dates of his/her commission. Until, and unless, you have received it you may not assume your notary commission has been issued. (The notary bond is to be submitted to the Secretary of State’s office with the completed application and filing fee – you should not have the original bond in your files.)

30. **True.** A copy of these statutes, current through the 2007 Legislative session, is included in this handbook for your reference.

MONTANA CODE ANNOTATED

TITLE 1. GENERAL LAWS AND DEFINITIONS

CHAPTER 5. PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS - NOTARIES PUBLIC

Part 4. Notaries Public

1-5-401. Appointment. The secretary of state may appoint and commission as many notaries public for the state of Montana as in the secretary of state's judgment may be deemed best.

1-5-402. Qualifications -- residence. A person appointed as notary public may not, at the time of appointment, be a convicted felon. Each person appointed as a notary public must be a resident of Montana for at least 1 year immediately preceding appointment and must continue to reside within the state of Montana. Removal from the state or conviction of a felony vacates the office and is equivalent to resignation.

1-5-403. Term of office -- limit on commissions. (1) The term of office of a notary public is 4 years from the date of commissioning. (2) A person may not have more than one Montana notary public commission in effect at one time.

1-5-404. Penalties -- revocation of commission -- prosecution for violation of law. (1) Upon 10 days' notice, the secretary of state may revoke the commission of a notary public for just cause. (2) The county attorney of a county in which a violation of this chapter or another law applicable to notaries public or notarial acts occurs shall prosecute the violation.

1-5-405. Bond and commission -- dates -- fees and documents. (1) Each notary public shall submit an application, a signed oath of office, and an official bond in the amount of \$10,000 for each 4-year term of office. The application and bond must be approved by the secretary of state. Upon the approval of the application and the bond, the payment of fees, and the filing in the office of the secretary of state of the official oath of the notary public, the secretary of state may issue a commission. (2) The effective date of the surety bond and the notary commission must be the same. (3) All required fees and required and properly completed documents must be submitted to the office of the secretary of state within 30 days before or within 30 days after the effective date of the surety bond.

1-5-406. Liabilities on official bond. For the official misconduct or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all damages sustained.

1-5-407. Certifying the official character of a notary. The secretary of state may certify to the official character of such notary public. Any notary public may file a copy of his commission in the office of any county clerk of any county in the state, and thereafter said county clerk may certify to the official character of such notary public.

1-5-408. Fees for filing or amending commission and issuing certificates. The secretary of state shall set and deposit fees in accordance with 2-15-405 for filing or issuing, in the manner provided for in 1-5-407, certificates. The secretary may charge a fee for changes made in the commission of a notary public, during the term of that commission, regarding the notary's name, residential address, business address, or residential or business telephone number. The secretary of state shall use application forms soliciting the information required by this part. The county clerk of any county in this state must receive a fee, as provided in 7-4-2631, for filing a copy of the commission and certifying to the official character.

1-5-409. Information to be filed -- amendments to commission. (1) A person appointed as a notary public shall file the person's business, if any, and residential addresses and telephone numbers with the office of the secretary of state. If the notary public changes the notary's address or telephone number during the notary's term of commission, the notary shall notify the office of the secretary of state in writing and shall sign the writing using the same signature that is used for notarial acts. (2) A notary public wishing to change the notary's name during the notary's term of commission shall file with the secretary of state a rider or other document from the notary's surety company showing the change of name. The notary public shall also file with the secretary of state a written example of the notary's new official signature.

1-5-410 through 1-5-414 are reserved.

1-5-415. Jurisdiction. A person receiving a commission as notary public has jurisdiction to perform the person's official duties and acts in every county of the state of Montana irrespective of the person's place of residence within the state. A notary public may perform notarial acts outside Montana pursuant to 1-5-605.

1-5-416. Powers and duties. (1) A notary public shall: (a) subject to subsection (2), take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of the proof or acknowledgment, endorsed on or attached to the instrument; (b) take depositions and affidavits, if the notary is knowledgeable of the applicable legal requirements, and administer oaths and affirmations in all matters incident to the duties of the notary public's office or to be used before any court, judge, officer, or board in this state; (c) whenever requested and upon payment of the required fees, make and give a certified copy of any record kept or that originated in the notary public's place of employment; (d) provide and keep an official crimper-type or ink stamp seal, upon which must be engraved the name of the state of Montana and the words "Notarial Seal" or "Notary Public", with the name of the notary public exactly as that name appears on the notary's certificate of commission issued by the secretary of state; (e) authenticate with the notary public's official seal, and the notary's original signature as it appears on the notary's certificate of commission, all official acts. Whenever the notary public signs officially as a notary public, the notary public shall add to the signature the words "Notary Public for the State of Montana, residing at.... (stating the name of the town or city of the notary public's post office)" and shall endorse upon the instrument the date, showing the month, day, and four-digit year, of the expiration of the notary public's commission. (f) on every document on which the notary's seal of office is used, type, stamp, or legibly print the notary's name, as shown on the notary's certificate of commission, after or below the original signature of the notary. (2) A notary public may not: (a) notarize the notary's own signature; (b) notarize a document in which the notary is individually named or has an interest from which the notary will directly benefit by a transaction involving the document; or (c) certify a document issued by a public entity, such as a birth, death, or marriage certificate, unless the notary is employed by the entity issuing or holding the original version of that document.

1-5-417. Authority of notaries who are stockholders, officers, or employees of banks or other corporations. (1) Except as provided in this section, a notary public who is a stockholder, director, officer, or employee of a bank or other corporation may: (a) take the acknowledgment of a party to a written instrument executed to or by that bank or corporation; (b) administer an oath to any other stockholder, director, officer, employee, or agent of that bank or corporation; or (c) protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments that may be owned or held for collection by that bank or other corporation. (2) A notary public who is a stockholder, director, officer, or employee of a bank or other corporation and is individually named in an instrument or signs an instrument as a representative of the bank or other corporation may not: (a) take the acknowledgment of that instrument by or to that bank or other corporation; or (b) protest a negotiable instrument owned or held for collection by that bank or other corporation. (3) A notary public who violates this section is guilty of a misdemeanor and upon conviction must be punished as provided by law.

1-5-418. Maximum fees of notaries. Maximum fees of notaries public are as follows: (1) for drawing an affidavit, deposition, or other paper for which a maximum fee is not otherwise specified, \$3.50 a page; (2) for taking an acknowledgment or proof of a deed or other instrument, including the seal and the writing of the certificate, for the first signature, \$5; (3) for each additional signature of the same person as referred to in subsection (1), \$1; (4) for administering an oath or affirmation, \$5; (5) for certifying an affidavit, with or without seal, including oath, \$5; and (6) for mileage or other charge to travel to or from or to and from the place of the notarial act, the amount provided by law for state employees when using the same mode of travel and traveling on state business.

1-5-419. Transfer of records upon termination of office. It is the duty of every notary public on his resignation or removal from office or at the expiration of his term and, in case of his death, of his legal representative to forthwith deposit all the records kept by him in the office of the county clerk of the county in which he was resident. On failure to do so, the person so offending is liable to damages to any person injured thereby.

1-5-420. Powers and duties of clerk with whom records deposited. It is the duty of each clerk aforesaid to receive and safely keep all such records and papers of the notary in the case above named and to give attested copies of them under his

seal, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

Part 6. Notarial Acts

1-5-601. Short title. This part may be cited as the "Uniform Law on Notarial Acts".

1-5-602. Definitions. As used in this part, the following definitions apply:

- (1) "Acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated in the instrument and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified in the instrument.
- (2) "In a representative capacity" means:
 - (a) for and on behalf of a corporation, partnership, trust, or other entity as an authorized officer, agent, partner, trustee, or other representative;
 - (b) as a public officer, personal representative, guardian, or other representative in the capacity recited in the instrument;
 - (c) as an attorney in fact for a principal; or
 - (d) in any other capacity as an authorized representative of another.
- (3) "Notarial act" means any act that a notary public of this state is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.
- (4) "Notarial officer" means a notary public or other officer authorized to perform notarial acts.
- (5) "Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation.

1-5-603. Notarial acts. (1) In taking an acknowledgment, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument. (2) In taking a verification upon oath or affirmation, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified. (3) In witnessing or attesting a signature, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named in the instrument. (4) In certifying or attesting a copy of a document or other item, the notarial officer shall determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied. (5) (a) In making or noting a protest of a negotiable instrument, the notarial officer shall identify the instrument and certify either:

- (i) that due presentment has been made; or
 - (ii) the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.
- (b) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.
- (6) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is:
- (a) personally known to the notarial officer;
 - (b) identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or
 - (c) identified on the basis of a current identification document or documents that show a photograph and signature of the person.

1-5-604. Notarial acts in this state. (1) A notarial act may be performed within this state by the following persons:

- (a) a notary public of this state;
 - (b) a judge, clerk, or deputy clerk of any court of this state; or
 - (c) any other person authorized to perform the specific act by the law of this state.
- (2) Notarial acts performed within this state under federal authority as provided in 1-5-607 have the same effect as if performed by a notarial officer of this state.
- (3) Subject to the provisions of 1-5-605, notarial acts performed within Montana by notarial officers of bordering states have the same effect as if performed by a notarial officer of Montana.

(4) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

1-5-605. Reciprocity of notarial acts. (1) A Montana notarial officer may perform a notarial act in a bordering state if the state recognizes the officer's authority within the state. (2) A notarial act performed in Montana by a notarial officer of a bordering state has the same effect under Montana law as if the act were performed by a Montana notarial officer, provided that the bordering state grants Montana's notarial officers similar authority within the bordering state.

1-5-606. Notarial acts in other jurisdictions of the United States. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

- (a) a notary public of that jurisdiction;
- (b) a judge, clerk, or deputy clerk of a court of that jurisdiction; or
- (c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in 1-5-607 have the same effect as if performed by a notarial officer of this state.

(3) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(4) The signature and indicated title of an officer listed in subsection (1)(a) or (1)(b) conclusively establish the authority of a holder of that title to perform a notarial act.

1-5-607. Notarial acts under federal authority. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed anywhere by any of the following persons under authority granted by the law of the United States:

- (a) a judge, clerk, or deputy clerk of a court;
- (b) a commissioned officer on active duty in the military service of the United States;
- (c) an officer of the foreign service or consular officer of the United States; or
- (d) any other person authorized by federal law to perform notarial acts.

(2) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(3) The signature and indicated title of an officer listed in subsection (1)(a), (1)(b), or (1)(c) conclusively establish the authority of a holder of that title to perform a notarial act.

1-5-608. Foreign notarial acts. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

- (a) a notary public or notary;
- (b) a judge, clerk, or deputy clerk of a court of record; or
- (c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(3) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of that nation stationed in the United States conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(4) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

(5) An official stamp or seal of an officer listed in subsection (1)(a) or (1)(b) is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

(6) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

1-5-609. Certificate of notarial acts. (1) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed, the date on

which the notarial act is performed, the type of notarial act being performed, and the title of the office of the notarial officer and must include the official seal of office. If the officer is a Montana notary public, the certificate must also indicate the place of the notarial officer's residence and the date of expiration of the commission of office, but omission of that place or date may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

(2) A certificate of a notarial act is sufficient if it meets the requirements of subsection (1) and it:

(a) is in the short form set forth in 1-5-610;

(b) is in a form otherwise prescribed by the law of this state;

(c) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(d) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(3) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by 1-5-603.

1-5-610. Short forms. The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by 1-5-416 and 1-5-609(1):

(1) For an acknowledgment in an individual capacity:

State of _____

County of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s)) _____

(Signature of notarial officer)

(Seal, if any)

(Name - typed, stamped, or printed)

Title (and Rank)

(Residing at)

[My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of _____

County of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

(Signature of notarial officer)

(Seal, if any)

(Name - typed, stamped, or printed)

Title (and Rank)

(Residing at)

[My commission expires: _____]

(3) For a verification upon oath or affirmation:

State of _____

County of _____

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement)

(Signature of notarial officer)
(Seal, if any)

(Name - typed, stamped, or printed)

Title (and Rank)

(Residing at)
[My commission expires: _____]

(4) For witnessing or attesting a signature:

State of _____

(County) of _____

Signed or attested before me on (date) by (name(s) of person(s)) _____

(Signature of notarial officer)
(Seal, if any)

(Name - typed, stamped, or printed)

Title (and Rank)

(Residing at)
[My commission expires: _____]

(5) For attestation of a copy of a document:

State of _____

(County) of _____

I certify that this is a true and correct copy of a document in the possession of _____.

Dated _____

(Signature of notarial officer)
(Seal, if any)

(Name - typed, stamped, or printed)

Title (and Rank)

(Residing at)
[My commission expires: _____]

1-5-611. Uniformity of application and construction. This part must be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of this part among states enacting it.

NOTARY ASSOCIATIONS AND REFERENCE INFORMATION

The following is intended as informational only and is not to be construed as a recommendation or endorsement of any organization, product or service.

American Society of Notaries

PO Box 5707
Tallahassee FL 32314
1-850-671-5164
www.notaries.org

Montana Notary Guild

PO Box 275
Billings MT 59103-0275
(406) 294-5545

The National Notary Association

9350 De Soto Ave
PO Box 2402
Chatsworth CA 91313-2402
1-800-876-6827
www.NationalNotary.org

The Notary Law Institute

P.O. Box 1932
961 W Center St
Orem, UT 84057
1-800-722-8708
www.notarylaw.com

United States Notary Association

One Gateway Center, Suite 402
420 Fort Duquesne Boulevard
Pittsburgh, PA 15222-1499
1-800-587-2588
www.enotary.org

Materials and Reference Information

Empowered Notary

Notary stamps and seals, journals, and related products
www.empowerednotary.com

Public Practices & Glossary, by Raymond C. Rothman, for information on the history, duties, and responsibilities of notaries.

Application Instructions for a Notary Commission in Montana

The process is the same for new and renewal applicants as of the date of this publication.

1. Read through these instructions thoroughly. If there is *anything* that you don't understand, please visit the Secretary of State's website at sos.mt.gov/notary or contact the office at (406) 444-5379. It is strongly suggested that you become familiar with the responsibilities and legal liabilities imposed upon Notaries Public **before** applying for a commission.

2. Make arrangements to obtain a \$10,000 surety bond written for a term of four years. These are available through most insurance companies licensed to do business in the state of Montana. A surety bond is not insurance for the notary. It is meant to protect the public from any claim made against the State as a result of your actions. In the event of such a claim, the bonding company would look to you, the notary, for repayment of the claim amount. You may wish to discuss with your insurance agent the need for Errors & Omissions Insurance to provide personal coverage to protect yourself.

3. Fill out the form titled, "Application, Statement, and Oath of Office for Commission as a Notary Public, Revised 3/2008". This form must be correctly notarized.

- **Enter your name exactly the way you normally make your signature.** This is the name in which your Notary Commission will be issued and it must match the name on the surety bond and your signature. (If your legal name is "John Quincy Public", but you normally sign "J. Q. Public", then enter J. Q. Public on the application.) **Make sure you follow the directions on the form and provide all the information requested.** Incomplete applications will be returned for completion; this will delay the processing of your commission request. Be sure to include your mailing address to insure delivery of your Certificate of Commission.

4. When you receive the bond:

- **Make sure all appearances of your name on both the application and the bond are exactly the same.**
- **Check that the city and county listed on the bond are where you live, *not* where you work.**
- **Sign the bond on the line for the "Principal".**

5. Send the **original** application form and bond and the filing fee of \$25 (check or money order) **within 30 days (before or after) of the effective date of the bond to:**

Montana Secretary of State
Certification and Notary Services
PO Box 202801
Helena MT 59620-2801

6. You should receive your commission certificate within 10 days – 2 weeks. Verify that your name is correct and note your commission dates. You are responsible for procuring your notary seal/stamp.

**YOU ARE NOT A NOTARY PUBLIC FOR THE STATE OF MONTANA
UNLESS YOU HAVE RECEIVED AN OFFICIAL CERTIFICATE OF COMMISSION
SHOWING YOUR NAME AND THE DATES OF YOUR TERM OF OFFICE**

RENEWING YOUR COMMISSION

The single, most-frequently asked question for the notary section of the Secretary of State's Office is: "How do I renew my commission?" Generally the process is exactly the same for new applicants and for renewals. While the specific details and forms may change from time to time, the basic requirements remain the same:

- Carefully read and follow the instructions for applying/renewing a notary commission available through the Secretary of State's office or on the website listed below. A current application and instructions are included on the previous pages. Before using them, please verify that these forms or instructions have not been updated since publication of this book.
- Obtain and complete the application forms required for a commission.
- Contact your bonding agency to renew your surety bond.
- Be sure to sign the surety bond (on the line for "Principal")
- Send all the original documents, together with the filing fee, to:

**Montana Secretary of State
Certifications and Notary Section
PO Box 202801
Helena MT 59620-2801**

The Secretary of State's website, <http://sos.mt.gov/>, will always have the most current and updated information, as well as any necessary forms and instructions. You are encouraged to visit the website, or feel free to contact the office at (406) 444-5379, or (406) 444-1877.

UPDATING YOUR PERSONAL INFORMATION

Montana code requires notaries to notify the Secretary of State's Office in writing if any of their contact information changes during the term of their commission. [\[1-5-409\(1\) and \(2\), MCA\]](#) You may photocopy and use the form on the next page to submit such changes to the Secretary of State's office, or you may download a copy from our website. Send to the address listed on the form.

Indicate the item(s) to be changed:

Your Name as it appears on your current Certificate of Commission:

For name-change requests only

Your New Name:

New Home/Cell Phone Number:

New Physical/Residence Address (if different):

New Work Phone Number:

SIGNED _____ (sign with **new** name, if applicable)

DATE _____

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CHECKLIST FOR PROPER NOTARIZATIONS

Montana Code Annotated (MCA) requires a Montana notary public to complete a full notarial block each and every time a notarial act is performed, even when the form does not ask for all the information.

The following are the steps that must be completed each and every time:

1. The venue - this is the state and county in which the notarial act was performed. *This is not always the state and county in which the notary resides or works.*
2. The date the notarial act was performed. *This may not always be the same date that the document was completed and/or signed.*
3. A written description of what type of notarial act the notary performed. *The notary may need to refer to [1-5-610, MCA](#), or pages 26 - 28 of this notary handbook, to help with the wording and format.*
4. The notary's official signature, not a facsimile of their signature. *The official name on the Notarial Seal and the notary's official signature must correspond with the notary's commissioned name on file with the Office of the Secretary of State.*
5. The notary must type, stamp or print their official name legibly after their official signature. *This is in addition to their official name contained in their notarial seal. (The notary's name should appear three times on every notarial block.)*
6. Title of the official who is performing the notarial act. *If a commissioned notary it would be "Notary Public for the State of Montana". If not a commissioned notary, it would be the official title that gives them the authority to notarize documents in and for the State of Montana.*
7. The words "residing at" and the notary's city/town of residence. *This is not necessarily where the notary works or where the notarial act is being performed. It does not include the street or mailing address nor the county or state.*
8. The notary must also endorse the instrument with their current commission expiration date using month, day, & full four digit year. *The notary should make sure they are using the expiration date referenced on their certificate of commission.*
9. The notary must affix their official "Notarial Seal." *A commissioned notary's official seal must bear their name, exactly as it appears on their Certificate of Commission, the words "Notarial Seal" or "Notary Public" and "State of Montana". If not a commissioned notary then the official seal would be that of the office that gives the person the authority to notarize in and for the State of Montana. Military personnel are not required to have a seal.*

Sample Common Notarial Block:

State of Montana

County of (Where you are performing the notarization)

Signed and acknowledged before me on (date) by (name of person signing document) .

(SEAL)

(Signature of Notary)

(Name - typed, stamped, or printed)

Notary Public for the State of Montana

(Title)

Residing at (city where notary lives)

My Commission Expires (Month / Day / Four digit Year)

1	2	3	4	5	6	7	8	9	10	11	12	13	14
15	16	17	18	19	20	21	22	23	24	25	26	27	28
29	30												